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Attorney for Plaintiff Environmental Research Center, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

**ENVIRONMENTAL RESEARCH
CENTER, INC., a California non-profit
corporation**

Plaintiff,

vs.

BIOHM HEALTH LLC.; and DOES 1-100

Defendants.

CASE NO. RG21101129

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 4, 2021

Trial Date: None set

1. INTRODUCTION

1.1 On June 4, 2021, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against BIOHM Health LLC (“BIOHM”) and Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by BIOHM contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a “Covered Product” or collectively as “Covered

Products”) are the dietary supplements sold by BIOHM that contain lead, which are: (1) Biohm Probiotic Supplement with Super Greens, and (2) Biohm Super Greens Probiotic Energy Supplement Clean Energy Greens.

1.2 ERC and BIOHM are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

1.4 For purposes of this Consent Judgment, the Parties agree that BIOHM is a business entity that has employed ten or more persons at all times relevant to this action, and qualifies as a “person in the course of doing business” within the meaning of Proposition 65. BIOHM manufactures, distributes, and/or sells the Covered Products.

1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation dated March 25, 2021 that was served on the California Attorney General, other public enforcers, and BIOHM (“Notice”). A true and correct copy of the 60-Day Notice dated March 25, 2021 is attached hereto as **Exhibit A** and incorporated herein by reference. More than 60 days have passed since the Notice was served on the Attorney General, public enforcers, and BIOHM and no designated governmental entity has filed a Complaint against BIOHM with regard to the Covered Products or the alleged violations.

1.6 ERC’s Notice and Complaint allege that use of the Covered Products by California consumers exposes them to lead without first receiving clear and reasonable warnings from BIOHM, which is in violation of California Health and Safety Code section 25249.6. BIOHM denies all material allegations contained in the Notice and Complaint.

1.7 The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or be construed as an admission by any of the Parties or by any of their respective officers,

1 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
2 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
3 issue of law, or violation of law.

4 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
5 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
6 any current or future legal proceeding unrelated to these proceedings.

7 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
8 as a Judgment by this Court.

9 **2. JURISDICTION AND VENUE**

10 For purposes of this Consent Judgment and any further court action that may become
11 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
12 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
13 over BIOHM as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
14 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
15 claims up through and including the Effective Date that were or could have been asserted in this
16 action based on the facts alleged in the Notice and Complaint.

17 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

18 **3.1** Beginning on the Effective Date, BIOHM shall be permanently enjoined from
19 manufacturing for sale in the State of California, “Distributing into the State of California,” or
20 directly selling in the State of California, any Covered Product that exposes a person to a
21 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the
22 warning requirements under Section 3.2.

23 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
24 of California” shall mean to directly ship a Covered Product into California for sale in
25 California or to sell a Covered Product to a distributor that BIOHM knows or has reason to
26 know will sell the Covered Product in California.

27 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
28 Level” shall be measured in micrograms, and shall be calculated using the following formula:

1 micrograms of lead per gram of product, multiplied by grams of product per serving of the
2 product (using the largest serving size appearing on the product label), multiplied by servings
3 of the product per day (using the largest number of recommended daily servings appearing on
4 the label), which equals micrograms of lead exposure per day. If the label contains no
5 recommended daily servings, then the number of recommended daily servings shall be one.


6 **3.2 Clear and Reasonable Warnings**

7 If BIOHM is required to provide a warning pursuant to Section 3.1, one of the following
8 warnings must be utilized (“Warning”):

9 **Option 1:**

10 **WARNING:** Consuming this product can expose you to chemicals including lead, which
11 is/are known to the State of California to cause [cancer and] birth defects or other
12 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

13 **Option 2:**

14  **WARNING:** [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov/food.

15 BIOHM shall use the phrase “cancer and” in the Warning if BIOHM has reason to believe
16 that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead or as determined
17 pursuant to the quality control methodology set forth in Section 3.4 or if BIOHM has reason to
18 believe that another Proposition 65 chemical is present which may require a cancer warning. For
19 the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral
20 triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no
21 smaller than the height of the word “**WARNING.**”

22 The Warning shall be securely affixed to or printed upon the label of each Covered
23 Product and it must be set off from other surrounding information and enclosed in a box. In
24 addition, for any Covered Product sold over the internet, the Warning shall (1) appear on the
25 checkout page when a California delivery address is indicated for any purchase of any Covered
26 Product, (2) be provided by including the Warning, or a clearly marked hyperlink using the
27 word “**WARNING**” (in bold and capitalized letters) so long as the hyperlink goes directly to a
28 page prominently displaying the Warning without content that detracts from the Warning, on

1 the product display page, or (3) be otherwise prominently displayed to the purchaser prior to
2 completing the purchase. For purposes of Section 3.2, the Warning is not prominently
3 displayed if the purchaser must search for it in the general content of the website.
4 Additionally, if the Warning is provided on the checkout page, an asterisk or other identifying
5 method must be utilized to identify which products on the checkout page are subject to the
6 Warning.

7 The Warning shall be at least the same size as the largest of any other health or safety
8 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all
9 capital letters and in bold print. No statements intended to or likely to have the effect of
10 diminishing the impact of the Warning on the average lay person shall accompany the Warning.
11 Further, no statements may accompany the Warning that state or imply that the source of the listed
12 chemical has an impact on or results in a less harmful effect of the listed chemical.

13 BIOHM must display the above Warning with such conspicuousness, as compared with
14 other words, statements or designs on the label, or on its website, if applicable, to render the
15 Warning likely to be read and understood by an ordinary individual under customary conditions
16 of purchase or use of the product.

17 For purposes of this Consent Judgment, the term “label” means a display of written,
18 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
19 container or wrapper.

20 **3.3 Conforming Covered Products**

21 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
22 Level” is no greater than 0.5 micrograms of lead per day as determined by the the exposure
23 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
24 3.4, and that is not known by BIOHM to contain other chemicals that violate Proposition 65’s safe
25 harbor thresholds.

26 **3.4 Testing and Quality Control Methodology**

27 **3.4.1** Beginning within one year of the Effective Date, BIOHM shall arrange
28 for lead testing of the Covered Products at least once a year for a minimum of three

1 consecutive years by arranging for testing of three (3) randomly selected samples of each of
2 the Covered Products, in the form intended for sale to the end-user, which BIOHM intends to
3 sell or is manufacturing for sale in California, directly selling to a consumer in California or
4 “Distributing into the State of California.” If tests conducted pursuant to this Section
5 demonstrate that no Warning is required for a Covered Product during each of three
6 consecutive years, then the testing requirements of this Section will no longer be required as to
7 that Covered Product. However, if during the three-year testing period, BIOHM changes
8 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
9 Products, BIOHM shall test that Covered Product annually for at least two (2) consecutive
10 years after such change is made.

11 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
12 lead detection result of the three (3) randomly selected samples of the Covered Products will
13 be controlling.

14 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
15 laboratory method that complies with the performance and quality control factors appropriate
16 for the method used, including limit of detection and limit of quantification, sensitivity,
17 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
18 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.010
19 mg/kg.

20 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
21 independent third party laboratory certified by the California Environmental Laboratory
22 Accreditation Program or an independent third-party laboratory that is registered with the
23 United States Food & Drug Administration.

24 **3.4.5** Nothing in this Consent Judgment shall limit BIOHM’s ability to
25 conduct, or require that others conduct, additional testing of the Covered Products, including
26 the raw materials used in their manufacture.

27 **3.4.6** Within thirty (30) days of ERC’s written request, BIOHM shall deliver
28 lab reports obtained pursuant to Section 3.4 to ERC. BIOHM shall retain all test results and

documentation for a period of five years from the date of each test.

3.4.7 The testing requirements of Section 3.4.1 of this Consent Judgment shall not apply to any Covered Product for which a Warning is provided, continuously and without interruption from the Effective Date, in accordance with Section 3. In the event a Warning is provided after the Effective Date but BIOHM thereafter ceases to provide the Warning, the testing requirements of Section 3.4.1 of this Consent Judgment shall apply beginning one year after Effective Date or the date the Warning ceases to be provided, whichever date is later, unless the cessation in providing the Warning was a temporary error that was resolved when discovered.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees, and costs, BIOHM shall make a total payment of US Fifty Thousand Dollars (\$50,000) (the "Total Settlement Amount") to ERC within ten (10) days of the Effective Date, following email request from ERC to BIOHM for such payment ("Due Date"). BIOHM shall make this payment by wire transfer to ERC's account, for which ERC will give BIOHM the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 \$25,200.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$18,900.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$6,300.00) of the civil penalty.

4.3 \$1,660.79 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 \$18,831.95 shall be distributed to ERC as an Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by Defendants in this matter. These activities are detailed

1 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
2 chemicals in dietary supplement products in California. ERC's activities have had, and will
3 continue to have, a direct and primary effect within the State of California because California
4 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
5 supplements and/or by providing clear and reasonable warnings to California consumers prior
6 to ingestion of the products.

7 Based on a review of past years' actual budgets, ERC is providing the following list of
8 activities ERC engages in to protect California consumers through Proposition 65 citizen
9 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
10 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
11 supplement products that may contain lead and are sold to California consumers. This work
12 includes continued monitoring and enforcement of past consent judgments and settlements to
13 ensure companies are in compliance with their obligations thereunder, with a specific focus on
14 those judgments and settlements concerning lead. This work also includes investigation of new
15 companies that ERC does not obtain any recovery through settlement or judgment; (2)
16 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
17 Compliance Program by acquiring products from companies, developing and maintaining a
18 case file, testing products from these companies, providing the test results and supporting
19 documentation to the companies, and offering guidance in warning or implementing a self-
20 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM
21 (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of
22 contaminated products that reach California consumers by providing access to free testing for
23 lead in dietary supplement products (Products submitted to the program are screened for
24 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
25 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
26 that submitted the product).

27 ERC shall be fully accountable in that it will maintain adequate records to document
28 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds

1 are being spent only for the proper, designated purposes described in this Consent Judgment.
2 ERC shall provide the Attorney General, within thirty days of any request, copies of
3 documentation demonstrating how such funds have been spent.

4 **4.5** \$4,307.26 shall be distributed to ERC for its in-house legal fees. Except as
5 explicitly provided herein, each Party shall bear its own fees and costs.

6 **4.6** In the event that BIOHM fails to remit the Total Settlement Amount owed
7 under Section 4 of this Consent Judgment on or before the Due Date, BIOHM shall be deemed
8 to be in material breach of its obligations under this Consent Judgment. ERC shall provide
9 written notice of the delinquency to BIOHM via electronic mail. If BIOHM fails to deliver the
10 Total Settlement Amount within five (5) days from the written notice, the Total Settlement
11 Amount shall accrue interest at the statutory judgment interest rate provided in the California
12 Code of Civil Procedure section 685.010. Additionally, BIOHM agrees to pay ERC's
13 reasonable attorney's fees and costs for any efforts to collect the payment due under this
14 Consent Judgment.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
17 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
18 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
19 modified consent judgment.

20 **5.2** If BIOHM seeks to modify this Consent Judgment under Section 5.1, then
21 BIOHM must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to
22 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
23 provide written notice to BIOHM within thirty (30) days of receiving the Notice of Intent. If
24 ERC notifies BIOHM in a timely manner of ERC's intent to meet and confer, then the Parties
25 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
26 or via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.
27 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall
28 provide to BIOHM a written basis for its position. The Parties shall continue to meet and

1 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
2 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
3 confer period.

4 **5.3** In the event that BIOHM initiates or otherwise requests a modification under
5 Section 5.1, and the meet and confer process leads to a joint motion or application for a
6 modification of the Consent Judgment, BIOHM shall reimburse ERC its costs and reasonable
7 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the
8 motion or application.

9 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
10 **JUDGMENT**

11 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
12 terminate this Consent Judgment.

13 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
14 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
15 inform BIOHM in a reasonably prompt manner of its test results, including information
16 sufficient to permit BIOHM to identify the Covered Products at issue. BIOHM shall, within
17 thirty (30) days following such notice, provide ERC with testing information, from an
18 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
19 demonstrating BIOHM's compliance with the Consent Judgment. The Parties shall first
20 attempt to resolve the matter prior to ERC taking any further legal action.

21 **7. APPLICATION OF CONSENT JUDGMENT**

22 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
23 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
24 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
25 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
26 application to any Covered Product that is used by, distributed to or sold to consumers residing
27 and/or located outside the State of California.

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1 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
3 on behalf of itself and in the public interest, and BIOHM and its respective officers, directors,
4 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
5 franchisees, licensees, customers (not including private label customers of BIOHM's Covered
6 Products), distributors, wholesalers, retailers, and all other upstream and downstream entities
7 in the distribution chain of any Covered Product, and the predecessors, successors, and assigns
8 of any of them, which specifically includes, but is not limited to, BIOHM Management Inc.
9 (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby
10 fully releases and discharges the Released Parties from any and all claims, actions, causes of
11 action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that
12 could have been asserted from the handling, use, or consumption of the Covered Products, as
13 to any alleged violation of Proposition 65 or its implementing regulations arising from the
14 failure to provide Proposition 65 warnings on the Covered Products regarding lead up to and
15 including the Effective Date.

16 **8.2** ERC on its own behalf only, and BIOHM on its own behalf only, further
17 waive and release any and all claims they may have against each other for all actions or
18 statements made or undertaken in the course of seeking or opposing enforcement of
19 Proposition 65 in connection with the Notice and Complaint up through and including the
20 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
21 right to seek to enforce the terms of this Consent Judgment.

22 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
23 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
24 discovered. ERC on behalf of itself only, and BIOHM on behalf of itself only, acknowledge
25 that this Consent Judgment is expressly intended to cover and include all such claims up
26 through and including the Effective Date, including all rights of action therefore. ERC and
27 BIOHM acknowledge that the claims released in Sections 8.1 and 8.2 above may include
28 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such

1 unknown claims. California Civil Code section 1542 reads as follows:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
3 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
4 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
5 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
7 PARTY.

8 ERC on behalf of itself only, and BIOHM on behalf of itself only, acknowledge and
9 understand the significance and consequences of this specific waiver of California Civil Code
10 section 1542.

11 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
13 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

14 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
15 environmental exposures arising under Proposition 65, nor shall it apply to any of BIOHM's
16 products other than the Covered Products.

17 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

18 In the event that any of the provisions of this Consent Judgment are held by a court to be
19 unenforceable, the validity of the remaining enforceable provisions shall not be adversely
20 affected.

21 **10. GOVERNING LAW**

22 The terms and conditions of this Consent Judgment shall be governed by and construed in
23 accordance with the laws of the State of California.

24 **11. PROVISION OF NOTICE**

25 All notices required to be given to either Party to this Consent Judgment by the other shall
26 be in writing and sent to the following agents listed below via first-class mail or via electronic
27 mail where required. Courtesy copies via email may also be sent.

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FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

With a copy to:
Charles W. Poss
Environmental Research Center, Inc.
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: charles.poss@erc501c3.org

FOR BIOHM HEALTH LLC:

Afif Ghannoum, Chief Executive Officer
737 Bolivar Road, Suite 200
Cleveland, Ohio 44115
Email: afif@biohmhealth.com

With a copy to:
Michael Haritakis, Chief Operating Officer
737 Bolivar Road, Suite 200
Cleveland, Ohio 44115
Email: michael@biohmhealth.com

12. COURT APPROVAL

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent Judgment.

12.2 If the California Attorney General objects to any term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to the hearing on the motion.

12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be void and have no force or effect.

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1 **13. EXECUTION AND COUNTERPARTS**

2 This Consent Judgment may be executed in counterparts, which taken together shall be
3 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
4 as the original signature.

5 **14. DRAFTING**

6 The terms of this Consent Judgment have been reviewed by the respective counsel for
7 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
8 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
9 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
10 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
11 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
12 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
13 equally in the preparation and drafting of this Consent Judgment.

14 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

15 If a dispute arises with respect to either Party's compliance with the terms of this Consent
16 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or
17 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may
18 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

19 **16. ENFORCEMENT**

20 ERC may, by motion or order to show cause before the Superior Court of Alameda
21 County, enforce the terms and conditions contained in this Consent Judgment. In any action
22 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
23 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
24 To the extent the failure to comply with the Consent Judgment constitutes a violation of
25 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
26 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
27 provided by law for failure to comply with Proposition 65 or other laws.

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1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 **17.1** This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, including any and
4 all prior discussions, negotiations, commitments, and understandings related thereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

10 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
11 **CONSENT JUDGMENT**

12 This Consent Judgment has come before the Court upon the request of the Parties. The
13 Parties request the Court to fully review this Consent Judgment and, being fully informed
14 regarding the matters which are the subject of this action, to:

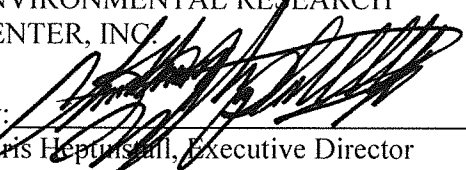
15 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
16 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
17 been diligently prosecuted, and that the public interest is served by such settlement; and

18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 **IT IS SO STIPULATED:**

21 Dated: 6/4/, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

22
23 By: 
24 Chris Hepburn, Executive Director

25 Dated: 06 / 9 / 2021, 2021

BIOHM HEALTH LLC


26
27 *Michael Haritakis*

28 By: Michael Haritakis
Its: Chief Operating Officer

1 **APPROVED AS TO FORM:**

2
3 Dated: June 9, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: 
6 Charles W. Poss
In-House Counsel

7
8 Dated: 06 / 9 / 2021, 2021

BIOHM HEALTH LLC

9
10 By: *Michael Haritakis*
11 Michael A. Haritakis, Esq.
12 In-House Counsel for BIOHM Health
13 LLC
14
15

16 **ORDER AND JUDGMENT**

17 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
18 approved and Judgment is hereby entered according to its terms.

19 IT IS SO ORDERED, ADJUDGED AND DECREED.

20
21 Dated: _____, 2021

22 Judge of the Superior Court
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